IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.08.2007
CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR

W.P.No.30456 of 2006

1. K.N.Raghavan
2. C.Kandasamy
3. C.Palanisamy
4. K.S.Palaniappan
5. D.Annaiyan
... Petitioners

vs.

1. The State of Tamilnadu
rep.by the Secretary to Govt.,
Home department,
Fort St.George,
Chennai 9

2. The Director General of Police
Chennai

3. The Commissioner of Police
Chennai 6

4. The Superintendent of Police
District Police Office
Salem.
... Respondents

Writ Petition filed under Article 226 of the constitution of India to issue a writ of Declaration i) to declare Rule 3(d) of the Special Rules for the Tamil Nadu Police Subordinate Service as violative of Articles 14 and 16 and therefore unreasonable and ultravires of the Constitution of India, as the same contains a provision which restricts the participation in the Drill test and Viva voce for promotion to the post of Sub Inspector ii) to declare the provision which states that only those who have secured 50% marks in the said written test would be called for the Drill test and via voce contained in memo Rc.No.554/NGB.1(2)/95 Dated 23.9.1996 of respondent No.2 as violative of Articles 14 and 16 of the Constitution c) to declare the presumption that the Drill test and Viva voce mentioned in Memo Rc.No.554/NGB.1(2)/95 dated 23.9.1996 for promotion to the post of Sub Inspector places the senior most candidates on par with the juniors and other youngsters as violative of Articles 14 and 16 of the Constitution and d) to award costs to the petitioners.

For Petitioner ... Mr.R.Singaravelan
For Respondents ... Mr.A.Arumugam, AGP

ORDER

The unsuccessful Headconstables in the selection process for the post of Sub Inspector of Police during the year 1996, have filed the Original application in O.A.No.37 of 1997 before the State Administrative Tribunal for the following reliefs:

i) to declare Rule 3(d) of the Special Rules for the Tamil Nadu Police Subordinate Service, as violative of Articles 14 and 16 and therefore unreasonable and ultravires of the Constitution as the same contains a provision, which restricts the participation in the Drill test and Viva voce for promotion to the post of Sub Inspector or any

ii) to declare that the provision which states that only those who have secured 50% marks in the said written test would be called for the Drill test and via voce contained in memo Rc.No.554/NGB.1(2)/95 Dated 23.9.1996 of respondent No.2 as violative of Articles 14 and 16 of the Constitution
iii) to declare the presumption that the Drill test and Viva voce mentioned in Memo Rc.No.554/NGB.1(2)/95 dated 23.9.1996 for promotion to the post of Sub Inspector places the senior most candidates on par with the juniors and other youngsters is violative of Articles 14 and 16 of the Constitution and
iv) to award costs to the petitioners.

2. Consequent to the abolition of the State Administrative Tribunal, the said Original Application No.37 of 1997 was transferred to this court and renumbered as W.P.No.30456 of 2006.

3. The case of the petitioners is that they were enlisted as Police Constable in the year 1974 and were promoted as Headconstables. As they were fit for promotion, they appeared for the written test prescribed to the post of Sub Inspectors of Police on 26.10.1996, pursuant to the communication dated 19.10.1996. They were called for the drill test and viva voce examination by the respondents, but were not selected.
4. The petitioners further submitted that though 50% marks was required for the written test, those who have secured less than 50% marks in the written test were called for viva voce by relaxation of the minimum required marks. Aggrieved by the same, the petitioners have filed this petition, challenging Rule 3(d) of the Special Rules for the Tamil Nadu Police Subordinate Service, as ultravires and violative of Articles 14 and 16 of the Constitution.

5. Learned counsel for the petitioners submitted that the selection process comprises of assessment of past service, written test, drill test and viva voce. Past performance carries 50 marks, written test carries 30 marks, drill test carries 10 marks and viva voce carries 30 marks. The candidates for promotion are screened during written test on the basis of marks obtained by them in the written test, therefore determination of merit and ability in three other components of the selection process for promotion would become impossible.

6. Learned counsel for the petitioners further submitted that many who had secured less than 50% of marks in the written test (i.e.less than 15 out of 30) were also called for the Drill Test and Viva Voce by relaxation of the minimum required marks. He further submitted that while relaxing the minimum required marks, the respondents ought to have relaxed the said requirement in respect of all other candidates who had appeared for the written test, without prescribing any further cut off marks.

7. Learned counsel for the petitioners further submitted that the Drill Test and viva voce test ought not to have been prescribed for the senior most candidates, as they cannot perform well in both the

tests because of their age and seniority compared to others. The youngsters and the service candidates cannot be treated equally on the basis of the drill test and viva voce test, as they are unequals due to their age and memory power. Hence, in view of the fact that success at the written test decides the entire process of promotion and one component of the process of promotion would nullify three other components of the promotion process. Rule 3(d) of the Rules, so far as it prescribes the requirement of success in the written test for participation in the Drill test and viva voce, as ultra vires and violative of Articles 14 and 16 of the Constitution.

8. Rule 3(d) of the Special Rules for the Tamil Nadu Police Subordinate Service, which is under challenge is extracted hereunder:
"Rule 3: Method of appointment and promotion
a) i) ...
ii) ...
b) (i) Promotion to the undermentioned posts should be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal.
...
Sub Inspectors
...
c)...
d)...
The Superintendents of Police will submit the lists prepared by them to the Range Promotion Board. The Range Promotion Board shall after scrutiny of the lists, submit its recommendation to the Deputy Inspector General of Police concerned who shall decide the number of Head Constables to be admitted to the written test which will be held at a Central Place at the range. The Range Promotion Board shall thereafter hold a viva voce examination including a Drill Test for those who are successful at the written test, select the man for training prescribed in rule 10 and send the list to the respective Deputy Inspector General of Police concerned for approval and final orders."

9. In Sahkari Ganna Vikas Samiti Ltd. v.Mahabir Sugar Mills (P) Ltd., reported in 1981 (4) SCC 149, the Supreme Court held as follows:

"The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services.
The ideal in recruitment is to do away with unfairness.
.....
A system of recruitment almost totally dependent on assessment of a person's academic knowledge and skills, as distinct form ability to deal with pressing problems of economic and social development, with people, and with novel situations cannot serve the needs of today, much less of tomorrow... We venture to suggest that out recruitment procedures should be such that we can select candidates who cannot only assimilate knowledge and sift material to understand the ramifications of a situation or a problem but have the potential to develop an original or innovative approach to the solution of problems.

It is now well recognised that while a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantage over the interview-test there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation,

effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity...

While we do feel that the marks allotted for interview are on the high side and it may be appropriate for the Government to re-examine the question, we are unable to uphold the contention that it was not within the power of the Government to provide such high marks for interview or that there was any arbitrary exercise of power."

10. In Lila Dhar v. State of Rajasthan, reported in 1984 (2) SCC 159, the Supreme Court delineated the importance and significance of the two tests, namely, the written and interview and held as follows:
"…. the written examination assess the man's intellect and the interview test the man himself and the 'the twain shall meet' for a proper selection."

11. In Om Prakash Shukla v. Akhilesh Kumar Shukla, reported in 1986 Suppl.SCC 283, the Supreme Court held that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

12. In Madanlal & Ors. v. State of J & K and others, repsorted in 1995 (3) SCC 486, the Supreme Court has considered the challenge of provision of a minimum mark for the interview and held as follows:
"Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted."

13. In K.H.Siraj v. High Court of Kerala reported in AIR 2006 Supreme Court 2339, the Supreme Court has dealt with rule prescribing the Written examination and oral interview for the post of District Munsif and delineated the importance of Written Examination and Viva-voce and held as follow:
"In our opinion, the interview is the best mode of assessing the suitability of a candidate for a particular position. While the written examination will testify the candidate's academic knowledge, the oral test alone can bring out or disclose his overall intellectual and personal qualifies like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership etc., which are also essential for a judicial officer."

14. On the perusal of the Rule 3(d) of the Special Rules for the Tamil Nadu Police Subordinate Service Rule, it is explicit that merit is considered for the post of Sub Inspector of Police. The past performance of the Headconstables is decided on the basis of assessment based on the PF, ACRs maintained from the date of regular promotion as Headconstable till date, and the prescribed mark is awarded. Further, the past performance is also assessed on the basis of the punishments undergone by the Headconstables from the date of their regular promotion. The rewards secured by

them are also considered. Apart from that the Headconstables have to undergo a written test for three hours in the subjects like IPC, Cr.P.C, Evidence Act, Special and other Local laws, station routine, Scientific aid investigation, Police Standing orders, and kavalar Kaiyedu. Written examination is only to select the best out of the Headconstables to man the post of Station House Officer and they should be conversant with the penal laws for their effective implementation. The effect of the written examination is to assess the person's academic knowledge of penal laws and intellectual ability.

15. In these circumstances, there is no arbitrariness in prescribing written examination as one of requirements for the purpose of promotion to the post of Sub Inspector of Police.

16. Further it is evident that the petitioners who have participated in the selection process and failed in written test to get promotion, have challenged the rules. It is a well settled legal position that a person who participates in the selection process, knowing fully aware of the rules and regulations, cannot challenge the same at the later stage on the ground of arbitrariness. The rule is in vogue from 1955 and unless some minimum qualifications are prescribed for selection to the post of Sub Inspector of Police, the Headconstables may not be in position even to register and investigate the offence.

17. As far as the allegation that a large number of persons who had secured less marks than 50 marks in the written test were called for in the drill test, is concerned, it is only a bald allegation and the same cannot be entertained. In view of the above, I do not find that the petitioners have made out any case for declaring Rule 3(d) of the Special Rules for the Tamil Nadu Police Subordinate Service as unconstitutional and violative of Articles 14 and 16 of the Constitution of India.

18. Hence, the Writ Petition is dismissed. No order as to costs.

03.08.2007

Index:Yes/No
Website: Yes/No
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